

AMENDED IN ASSEMBLY APRIL 30, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

AMENDED IN ASSEMBLY MARCH 15, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 164

Introduced by Assembly Member Harman

January 31, 2001

An act to amend Section 56500.3 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 164, as amended, Harman. Special education: due process hearings.

Existing law provides procedural safeguards, including due process hearings for the resolution of complaints regarding alleged violations of the Individuals with Disabilities Act. Existing law also authorizes parties to special education disputes to seek resolution through mediation prior to filing a request for a due process hearing.

This bill would authorize the local education agency to establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, for the purpose of encouraging the use and explaining the benefits of the mediation process to the parents, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 56500.3 of the Education Code is amended to read:

56500.3. (a) It is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process hearing. It is also the intent of the Legislature that these voluntary prehearing request mediation conferences be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a free, appropriate public education to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services shall not attend or otherwise participate in the prehearing request mediation conferences.

(b) Nothing in this part shall preclude the parent or the public education agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference. For purposes of this section, “attorney” means an active, practicing member of the State Bar of California or another independent contractor used to provide legal advocacy services, but does not mean a parent of the pupil who is also an attorney.

(c) Requesting or participating in a mediation conference is not a prerequisite to requesting a due process hearing.

(d) The local education agency may, pursuant to subparagraph (B) of paragraph (2) of subsection (e) of Section 1415 of Title 20 of the United States Code, establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, for the purpose of encouraging the use and explaining the benefits of the mediation process to the parents. *The local education agency may not deny or delay a parent’s right to a due process hearing under Section 56501 if the parent fails to participate in the meeting described in this subdivision.* A meeting pursuant to this subdivision shall be with a disinterested party who is under contract with either of the following:

1 (1) A parent training and information center or community
2 parent resource center established pursuant to Section 1482 or
3 1483 of Title 20 of the United States Code.

4 (2) An appropriate alternative dispute resolution entity.

5 (e) All requests for a mediation conference shall be filed with
6 the superintendent. The party initiating a mediation conference by
7 filing a written request with the superintendent shall provide the
8 other party to the mediation with a copy of the request at the same
9 time the request is filed with the superintendent. The mediation
10 conference shall be conducted by a person knowledgeable in the
11 process of reconciling differences in a nonadversarial manner and
12 under contract with the department pursuant to Section 56504.5.
13 The mediator shall be knowledgeable in the laws and regulations
14 governing special education.

15 (f) The prehearing mediation conference shall be scheduled
16 within 15 days of receipt by the superintendent of the request for
17 mediation. The mediation conference shall be completed within
18 30 days after receipt of the request for mediation unless both
19 parties to the prehearing mediation conference agree to extend the
20 time for completing the mediation.

21 (g) Based upon the mediation conference, the district
22 superintendent, the county superintendent, or the director of the
23 public education agency, or his or her designee, may resolve the
24 issue or issues. However, this resolution shall not conflict with
25 state or federal law and shall be to the satisfaction of both parties.
26 A copy of the written resolution shall be mailed to each party
27 within 10 days following the mediation conference.

28 (h) If the mediation conference fails to resolve the issues to the
29 satisfaction of all parties, the party who requested the mediation
30 conference has the option of filing for a state-level hearing
31 pursuant to Section 56505. The mediator may assist the parties in
32 specifying any unresolved issues to be included in the hearing
33 request.

34 (i) Any mediation conference held pursuant to this section shall
35 be held at a time and place reasonably convenient to the parent and
36 pupil.

37 (j) The mediation conference shall be conducted in accordance
38 with regulations adopted by the board.

39 (k) Notwithstanding any procedure set forth in this chapter, a
40 public education agency and a parent may, if the party initiating the

- 1 mediation conference so chooses, meet informally to resolve any
- 2 issue or issues to the satisfaction of both parties prior to the
- 3 mediation conference.
- 4 (l) The procedures and rights contained in this section shall be
- 5 included in the notice of parent rights attached to the pupil's
- 6 assessment plan pursuant to Section 56321.

